

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAMIEN T. WHITE,

Petitioner,

vs.

Case No. 04-CV-75071
HON. GEORGE CARAM STEEH

JOHN CASON,

Respondent.

_____/

ORDER ACCEPTING MAGISTRATE'S REPORT AND RECOMMENDATION (#25),
DISMISSING PETITION FOR WRIT OF HABEAS CORPUS,
AND DENYING CERTIFICATE OF APPEALABILITY

Damien White, appearing pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his state court jury convictions for first degree felony murder, M.C.L. § 750.316, and possession of a firearm during the commission of a felony, M.C.L. § 750.227b, for the robbery and death of Fred Sova at a battery shop. Petitioner is serving a life sentence without possibility of parole, and a mandatory two-year consecutive sentence on the firearm charge. On referral from this court, Magistrate Judge Paul J. Komives issued a 25-page February 21, 2006 Report and Recommendation recommending that the petition be denied on findings that: (1) petitioner's claims based on failure to suppress his confessions and a delayed arraignment were not cognizable pursuant to Stone v. Powell, 428 U.S. 465 (1976) and its progeny; (2) petitioner was not denied effective assistance of trial or appellate counsel; (3) giving due deference to the state trial court's credibility determinations, there is no factual basis supporting petitioner's claim that his confessions were involuntary; and (4) petitioner is not entitled to an

evidentiary hearing in an effort to support his ineffective assistance of counsel claims.

"A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). See also Fed. R. Civ. P. 72(b). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). Petitioner has not filed timely objections. See 28 U.S.C. § 636(b)(1); E.D. Mich. LR 72.1(d). Having reviewed the Report and Recommendation, and in the absence of timely objections,

IT IS ORDERED that Magistrate Judge Paul Komives' February 21, 2006 Report and Recommendation is hereby ACCEPTED as the findings and conclusions of this court. Damien White's petition for a writ of habeas corpus is hereby DISMISSED.

Before petitioner can appeal this court's decision, a certificate of appealability must issue. 28 U.S.C. §2253(c)(1)(A); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). Petitioner has made no such showing. Accordingly, a CERTIFICATE OF APPEALABILITY is hereby DENIED.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: March 24, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on March 24, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk